

Lesson 5: Credible Fear



U.S. Customs and
Border Protection

Lesson Objectives

After completing this lesson, you will be able to:

- Demonstrate the steps that a CBP officer must take when he or she encounters an individual claiming asylum or credible fear.
- Demonstrate how to process individuals subject to Expedited Removal who claim asylum or credible fear.
- Demonstrate how to process VWP applicants who claim asylum or credible fear.



Refugees



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Who Are Refugees?

Some examples of refugees are:

- Individuals fleeing war
- Women fleeing discrimination or persecution
- Religious believers



Scenario: Displaced Woman



Scenario: Fleeing War-Related Conditions



Scenario: Religious Persecution



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Refugees: The Facts

- There were 9.6 million refugees worldwide in 2004.
- More than 75 percent of displaced people are women and children.
- In 2003, approximately 12,800 unaccompanied and separated children applied for asylum.
- Today, as many as 300,000 children under the age of 18 serve in government forces or armed rebel groups.



What Laws and Treaties Protect Refugees?



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What Rights Do Refugees Have?

- Safe asylum
- Treatment equivalent to that accorded to any other foreigner who is a legal resident
- Freedom of thought and movement, from torture, and from degrading treatment
- Access to medical care, education, and the right to work



Asylees

An asylee is an alien who is both:

- In the U.S. or at a POE
- Found to be unable or unwilling to return to his or her country of nationality, or to seek the protection of that country because of persecution or a well-founded fear of persecution.



The Asylum Process

**Asylee in the
United States**

**Affirmative
Asylum
Application**

**Asylee obtains
application
through CIS**

**Asylee at
the POE**

**Claiming fear
upon arrival**

**Referral for
credible fear
interview**



1998 IRFA

When an individual seeks asylum or expresses credible fear, it is illegal to:

- Improperly encourage the alien to withdraw his or her application for admission.
- Fail to refer for an interview by an Asylum Officer for a determination of whether he or she has a credible fear of persecution.
- Incorrectly remove such an alien to a country where he or she may be persecuted.
- Detain such an alien improperly or in inappropriate conditions.



The Role of the CBP Officer

- Do NOT decide whether asylum claims have merit.
- Refer aliens who:
 - Seek asylum.
 - State that they have a fear.
 - Demonstrate any indication that they might fear persecution, torture, or return.
- Explain the process to the individual.



Credible Fear

Aliens may express a fear of persecution or return by responding to protection-related questioning:

- Affirmatively
- Vaguely or indirectly
- Non-verbally



Recognizing Credible Fear

- Claims of fear are not always instantly recognizable.
- Refer any suspected fear claim, even if the harm feared appears to be:
 - Purely personal
 - Purely criminal
 - Punishment for a crime the alien may have committed



Non-Verbal Fear

Non-verbal fear cues may include:

- Crying
- Hysteria
- Trembling
- Incoherent or difficult speech patterns
- Signs of physical trauma



Scenario: Credible Fear



Safe Third Country Agreement

The Safe Third Country Agreement:

- Helps determine which country is responsible for consideration of asylum or torture claims.
- Applies only to Northern land border POEs.
- States that asylum-seekers arriving from Canada must be returned to Canada, unless certain exceptions apply.




Fear and Expedited Removal

- Process for Expedited Removal in accordance with existing guidelines and refer for a credible fear interview.
- Provide Form M-444, Information about Credible Fear Interview, and Information about Threshold Screening Interview.
- Fax Forms I-860, I-867A & B, M-444, legal services provider list, and Information About Threshold Screening Interview to the Asylum Office having jurisdiction over the case.



Expedited Removal: I-160A

- Prepare Form I-160A, Notice of Refusal of Admission/Parole into the United States.
- Check the box “Refused admission and paroled into the U.S.”
- 
- Use only on the Northern Border.



Expedited Removal: Documents

- Seize any fraudulent documents.
- Prepare a travel packet.
- Complete a Single Journey Letter on CBP letterhead.
- Place the packet in the A-File to be used if/when the alien is returned to Canada.



Expedited Removal: A-Files

- If an A-File exists, you should create a temporary work folder.
- If a file does not exist, you should follow local procedures for creating an A-File and track the work folder in the (b)(7)(E) System (b)(7)(E).



Fear and Unaccompanied Minors

Aliens under the age of 18 who arrive without a guardian:

- Are typically set up for Section 240 hearing if they claim fear. They can claim asylum with Immigration Judge.
- Are referred for credible fear if they qualify under Exceptions for Expedited Removal.



Withdrawal of Asylum Claim

An asylum-seeker may withdraw the asylum claim and application for admission if he or she expresses concerns about being:

- Placed in Expedited Removal.
- Detained for a credible fear interview.



Fear and the Visa Waiver Program

- VWP applicants who claim fear must be processed differently. They must be processed for refusal, and referred to the Immigration Judge.
- This does not mean that they are eligible for a full-scale §240 hearing.



VWP Violators: Asylum

In a case where an alien wishes to apply for asylum, you should:

- Complete Form I-863.
- Check Box #3 and the appropriate category within that paragraph.
- Refer the alien to the Immigration Court for the asylum hearing in accordance with IFM Chapter 15.7(g)(4), VWP Asylum Requests and Procedures.



Form I-863

U.S. Department of Homeland Security
U.S. Customs and Border Protection

Notice of Referral to Immigration Judge

Date: _____
File: **A**

Name (Family Name in CAPS, First, Middle)
(b)(6)(b)(7)(C)

Place and Manner of Arrival
Otay Mesa Port of Entry, California/ Pedestrian primary lanes

Date of Arrival: _____

To Immigration Judge: _____

Inadmissible to the United States and ordered removed pursuant to section 235(b)(1) of the Act. A copy of the removal order is attached. The alien has requested asylum and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act.

admitted to the United States as a stowaway and has been ordered removed pursuant to section 235(a)(2) of the Act. The matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act.

admitted to the United States in the manner described below and has requested asylum. The matter is referred to the Immigration Judge for review in accordance with 8 CFR 208.2(b). Arrival category (check one):

<input type="checkbox"/> Crewmember/overstay	<input type="checkbox"/> Crewmember/refused	<input type="checkbox"/> Crewmember/landed
<input type="checkbox"/> 235(c) order	<input type="checkbox"/> VWPP/applicant	<input type="checkbox"/> VWPP/overstay
	<input type="checkbox"/> S-visa nonimmigrant	<input type="checkbox"/> Stowaway: credible fear

4. The above-named alien has been ordered removed by an immigration officer pursuant to section 235(b)(1) of the Act. In accordance with section 235(b)(1)(C) of the Act, the matter is referred for review to the Immigration Judge. The above-named alien claims to be (check one):

<input checked="" type="checkbox"/> a United States citizen	<input type="checkbox"/> a lawful permanent resident
<input type="checkbox"/> an alien granted refugee status under section 207 of the Act	<input type="checkbox"/> an alien granted asylum under section 208 of the Act

Data
about
traveler

Data about the POE
and mode of
transportation

Check all boxes that
apply to the nature of
the violator



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Discussion Question

What steps must be taken in order for a VWP violator to apply for asylum in the United States?



Lesson Summary

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- Demonstrate the steps that a CBP officer must take when he or she encounters an individual claiming asylum or credible fear.
- Demonstrate how to process individuals subject to Expedited Removal who claim asylum or credible fear.
- Demonstrate how to process VWP applicants who claim asylum or credible fear.





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